IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 123 of 2005

Date of Decision: 11.10.2007

Mohan Lal …. Appellant

Versus

State of H.P. ….. Respondent

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh,J.

Whether approved for reporting[1]? No

For the appellant : Sh. Manoj Pathak, Advocate.

For respondent :Sh. D. S.Nainta, Deputy Advocate General.

Per Surinder Singh, J.

The appellant has laid challenge, to the judgment of conviction and sentence passed by the learned Additional Sessions Judge in Sessions Trial No. 3 of 2004 decided on 28.2.2005 for allegedly having in his possession of 4 kilograms of charas. He was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- under section 20 of the Narcotic Drugs and Psychotropic Substances Act in short "the Act".

Precisely, the case of the prosecution has been that S.I. Dhabe Ram (PW8) of Police Station,

[1] Whether reporters of the Local papers are allowed to see the judgment? yes

Aut, District Mandi, along with other police officials had proceeded on patrolling in a private vehicle No.HP-01K-0242 towards ***Panarsa*** Bridge and put a Naka near the road, leading towards Dari-Dalashni on 14.11.2003 at about 8.30 p.m. The police party spotted the appellant crossing the Panarsa Bridge, carrying a plastic boru (Jute bag) in his right hand. On seeing them he got confused and took U-turn and had attempted to flee away. Police overpowered him. His identity was asked and plastic-boru was inspected by the Sub Inspector Dhabe Ram aforesaid. It contained 4 kilograms of *Charas*, out of which two samples of 25 grams each, were separated and marked A-1 and A-2. Both the samples were sealed separately with seal impression ”H”, remaining charas was also sealed in the same plastic-boru. The seal impression was separately taken on a piece of cloth. The aforesaid recovery was allegedly done in the presence of PW-2 Kuldip Singh driver of the vehicle which was engaged by the police party. The Investigating Officer had filled in N.C.B.Form Ex.PW-1/A. Thereafter, the seal was handed over to Kuldip Singh (PW) aforesaid. The case property was taken into possession vide memo Ex.PW-1/C. Police also prepared the site plan Ex.PW-8/B. The appellant was

arrested and the grounds of arrest were informed to him. A *Rukka* Ex.PW-4/A was sent through constable Baldev Singh, for registration of the case. The Sub Inspector aforesaid had prepared a special report and sent through HHC Bhuri Singh to the Superintendent of Police, Mandi.

The case property was deposited in the *Mal Khanna*. A sample of the case property was taken to the C.T.L.Kandaghat by Bhuri Singh Constable, and the Chemical Examiner, on analysis, was of the opinion that the exhibit contained contents of the Charas. The report of the Chemical Examiner is Ex.PW-8/D.

After completing the challan, it was presented in the court for trial.

Finding a prima-facie case, the learned trial court framed a charge-sheet, under section 20 of the Act against the appellant, to which he pleaded not guilty and claimed trial.

The prosecution examined its witnesses to prove the case. The respondent was also examined under section 313 of the Code of Criminal Procedure, his case was that of denial simpliciter. No defence was led.

The learned trial court had convicted and sentenced the appellant as aforesaid, which has

been assailed in the instant appeal, on the ground that the evidence of the prosecution was tainted, partisan and conflicting, further that the learned trial court had wrongly accepted the contradictory statements of the prosecution witnesses and failed to notice the non-compliance of the mandatory provisions of the Act, which render the prosecution case invalid.

Shri Manoj Pathak learned counsel for the appellant has vehementally argued that the case is replete. He had tried to pin point the contradictions in the statement of the witnesses and further ventilated that link evidence in the case is not complete and the version given by PW-1 is contradictory in material particulars. PW-2 Kuldip Singh driver had turned hostile, therefore, no implicit reliance can be put on the officials witnesses.

Contra, Shri D.S.Nainta, learned Deputy Advocate General, while supporting the impugned judgment of conviction and sentence has argued that the learned trial court has rightly appreciated the unimpeachable evidence of the prosecution on record, therefore, no interference is called for.

We have carefully examined the rival contentions and have meticulously gone through the evidence on record.

The prosecution has put reliance on the statement of Dube Ram (PW8). He was posted as Sub Inspector (SHO) Police Station Aut in the month of December, 2001 and was heading the police party at the relevant time. He has deposed that he along with police party, consisting of HC Ram Lal, Constable Narpat Ram, Constable Thakur Singh, Constable Dhan Dev, HC Jaspat Singh, Constable Chandermani and Baldev Singh had engaged a private jeep, kuldip Singh (PW2) was its driver and were on patrolling. They went towards Panarsa Bridge and held a *Nakka* there, the fact of proceeding on patrolling was recorded in rapat No.28 *Rojnamcha* Ex.PW-8/C. At about 8.30 p.m. the appellant was found crossing with a plastic boru in his right hand who on seeing the police party got perplexed and took U-turn and tried to flee away. After apprehending him, his identity was asked and his plastic boru was checked up, which contained charas in the form of billets and sticks in a polythene bag inside the boru. The recovered charas was weighed on the spot, with scale and weight, which this witness was carrying in the investigation-kit

and it was found to be 4 kilograms in weight. He further deposed that two specimen samples of 25 grams each were separately taken out and sealed in a parcel marked as A-1 and A-2 which were sealed with seal impression "H" and the remaining charas was also sealed with the same seal and has proved recovery of charas and specimen of seal Ex.PW-1/A and Ex.PW-1/F, which were also signed by the appellant. Further he has proved N.C.B. form Ex.PW-1/A filled in by him on the spot and according to him, the entire documentation was completed in the presence of the appellant. He has further deposed that the appellant was arrested and conveyed the grounds of arrest, vide memo Ex.PW-1/D, on which the appellant had made an endorsement. Further his personal search was conducted, vide memo Ex.PW-1/E and thereafter rukka Ex.PW-4/A, for registration of the case, was sent.

In the cross-examination he had admitted that he did not seek any option of the accused, for his personal search either before the police or Magistrate since as it was search of a luggage. Further that vehicle of Kuldip was taken without paying any charges and it is denied that Kuldip was present on the spot. He has testified that all the documents were prepared in the head-light of

the Jeep and the entire process took about one hour to complete the papers. He has admitted that Ex.PW-1/E does not find the signatures of Kuldip (PW) which might have skipped notice due to inadvertence. It is denied that he had foisted a false case upon the appellant.

H.C. Ram Lal (PW1) has corroborated his testimony. He has further stated that the place where the accused was apprehended was a deserted place and no independent witness was available. In the cross-examination he has stated that no option was taken from the accused, prior to taking of his search and no search was given by the officials to the accused.

Kuldip Singh (PW2) has not supported the case of the prosecution but in the cross-examination conducted by the learned Public Prosecutor he has stated that the police had obtained his signatures under pressure on the blank papers but he did not make any complaint to the higher authorities. He has identified his signatures on memoes Ex.PW-1/B to Ex.PW-1/E and Ex.PW-1/G.

Raj Kumar (PW3) has stated that the case property was deposited with him by the Investigating Officer in the mal-khanna, which was

entered in the relevant register and extract was proved as Ex.PW-3/A. Further according to him, one specimen packet A-1 was sent through constable Bhuri Singh, vide R.C. Number 77/2003 to C.T.L.Kandaghat for chemical examination and on return the said constable handed over receipt on the RC Ex.PW-3/E. He also stated that so long the case property remained with him, no body tampered with it. He has admitted in his cross-examination that at the time of sending the articles from the police station, its entry was made in the rapat roj namcha.

Baldev Singh (PW-4) has stated that he was a member of the patrolling party and went in a jeep, driven by Kuldip Singh (PW2) and lent strength to the case of the prosecution as far as recovery of incriminating articles is concerned and further according to him, he had handed over the ruka Ex.PW-4/A in the Police Station Aut to ASI Madan Lal, who recorded the FIR and handed over the case file to him and he further handed over the case file to S.I./SHO (PW8). He has admitted the suggestion in the cross-examination that the charas was usually transported from that area and further confirmed the fact that the members of the police party had seen the appellant coming from the

opposite side, who was chased by S.I./S.H.O., when he had tried to flee away.

HHC Bhuri Singh (PW5) has proved the fact of taking the sample from mal-khanna to its deposit in the C.T.L.Kandaghat, which fact has not been disputed in his cross-examination.

Constable Jagdish Chand (PW6) is a witness to the effect that the Special report was received in the office of Additional Superintendent of Police, Mandi and has proved endorsement Ex.PW-6/D.

ASI Madan Lal (PW7) has proved the receipt of rukka Ex.PW-4/A, on the basis of which, FIR was recorded.

On the critical examination of the aforesaid witnesses, it is apparent that all the prosecution witnesses, except Kuldip Singh (PW2), are unanimous in their statement and inspires confidence. As far as Kuldip Singh (PW2) is concerned he has admitted his signatures on some memoes, as referred to above, yet he failed to give any explanation as to why he did not complain against the conduct of the police officials for having obtained his signatures on the blank papers as alleged. Even he did not spell out how had he

come in contact with the police. He appears to have sided with the appellant.

Further the compliance of sections 50 of the Act and Section 100(4) of the Code of Criminal Procedure are not attracted in the facts and circumstances of the case. Otherwise also, there was also no human habitat nearby which could have facilitated the Investigating officer to include some independent witnesses from the locality. We have also found that there was a complete chain of link evidence from the recovery till the sample was analyzed in the Laboratory.

The statements of the officials witnesses inspire confidence. There is no rule of law, which can come to the assistance of the appellant that the officials witnesses ought to have been disbelieved. In such a situation, on the perusal of their testimony, we have found that the appellant has failed to elicit in their cross-examination that they were not the truth full witnesses, their version, to us, appears to be consistent free, from any embellishment and the minor contradictions are natural owing to time, which has elapsed from the date of alleged recovery and in examining the witnesses in the court.

Thus the recovery of charas, weighing 4 kilograms, from the possession of the appellant stands proved beyond a reasonable doubt. Therefore, we do not find anything which can impel us to interfere in the impugned judgment of conviction and sentence passed by the learned trial court. Accordingly, it is upheld and the appeal is dismissed.

(Surjit Singh),J.

11th October, 2007 (Surinder Singh),J.
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